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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

COORDINATED LATEX)	Judicial Council Coordination	
PROCEEDING SPECIAL TITLE)	Proceeding No. 4003	
(RULE 1550(B)))		
)	AMENDED CASE MANAGEMENT	
IN RE COORDINATED LATEX)	ORDER NO. 20	LITIGATION
GLOVE))		
)	ADOPTION OF BRIGHT-LINE	
)	TEST AND PROCEDURES	
GENERIC FILING)		
)		

The Court has determined that the adoption of a "bright-line" test should be used to facilitate the dismissal of appropriate defendants from specific causes of action in complaints in specific actions or from specific actions entirely following the termination of product identification discovery in those actions. Since this process will not preclude a motion for summary judgment on these issues at the conclusion of merits discovery, only clear-cut situations should result in the dismissal of particular defendants at this time.

BRIGHT-LINE TEST

Accordingly, the Court hereby adopts the following bright-line test:

Following the completion of pre-trial discovery relevant to product identification issues, the parties shall confer in good faith to decide whether based on the evidence: (a) a particular defendant's latex gloves were supplied to any institution at a time when plaintiff was

1 present at such institution; (b) if so supplied, a particular defendant's
2 latex gloves were used either by plaintiff or by others at such
3 institution in a manner in which such exposure reasonably could
4 cause harm. If such evidence does not exist for (a) and (b) above, the
5 plaintiff will agree to the voluntary dismissal of said defendant and
6 agrees to dismiss all claims against co-defendant distributors which
7 are based on their being in the chain of distribution of the product of
8 the bright-line dismissed defendant subject to the following condition:
9 If before trial, but for a period of one year following dismissal, or
10 ninety (90) days after the completion of merits discovery, whichever
11 occurs later, evidence of such use or exposure to defendant's latex
12 gloves which reasonably could have caused harm to plaintiff is
13 developed and which was not reasonably known by or disclosed
14 previously to plaintiff, the dismissed defendant will agree voluntarily
15 to return to the action by stipulation without asserting the statute of
16 limitations as a defense assuming that the initial filing was timely. To
17 the extent a plaintiff has alleged claims which impose liability
18 irrespective of a plaintiff's ability to prove actual use of or exposure
19 to a particular defendant's product, and where the applicable
20 substantive law recognizes the legal sufficiency of such claims, the
21 defendant shall not be entitled to dismissal for those claims.

22 **PROCEDURE FOR APPLICATION AND**
23 **RESOLUTION OF THE BRIGHT-LINE TEST**

24 The Court hereby adopts the following procedure for application and resolution of the
25 bright-line test in individual actions of JCCP 4003:

- 26 1. Promptly after completion of pretrial discovery relevant
27 to product identification issues in an individual action, plaintiff's

1 counsel and counsel for any defendant believing it should be
2 dismissed from the action entirely or from any counts of the
3 complaint by application of the bright-line test shall meet and
4 confer on that issue.

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6 2. If counsel agree on a dismissal of defendant, an appro-
7 priate consent order shall be prepared and submitted to the Court
8 prior to the bright-line dismissal date specified in the applicable
9 case management plan. If counsel agree that no dismissal is
10 appropriate, no further action shall be required. If parties do not
11 agree, an ex parte telephone conference shall be scheduled within
12 10 days of the applicable bright-line dismissal date. Both parties
13 may file points and authorities and declarations, not to exceed five
14 pages cumulatively, no later than 24 hours before the scheduled
15 telephone conference. Said papers shall be served personally or by
16 fax on opposing counsel no later than one court day prior to the
17 scheduled conference.

18 3. All Orders entered hereunder, both prior to and subsequent
19 to entry of this amended Order, include dismissal of all
20 claims against co-defendant distributors which are based on
21 their being in the chain of distribution of the products of the
22 bright-line dismissed defendant.

23
24 DATED: November 2, 1999

25 _____/s/
26 WILLIAM C. PATE
27 Judge of the Superior Court
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